

## REMARKS

At the outset, Applicant wishes to thank the Examiner for the courtesies extended during the July 23, 2007 telephone interview. At that interview, the current rejections were discussed.

Claims 1-13 are pending in this application. Claims 1 and 13 have been canceled without prejudice or disclaimer. Claims 5 & 7 have been cancelled and their features incorporated into claim 6. Claims 2-4, and 8-12 have been amended to address informalities cited by the Examiner, and to put the claims in better form. No new matter has been introduced by these amendments.

### Claim Rejections

#### Rejections under 35 USC §112 & 35 U.S.C. §101

A. Response to rejection of claims 2, 8-11, and 13 under 35 U.S.C. §112, second paragraph and 35 U.S.C. §101.

With respect to claims 2, and 8-11, Applicant has amended the claims to more particularly point out and distinctly claim the present subject matter. With respect to claim 13, it has been canceled without prejudice or disclaimer, thereby rendering the rejection moot. Reconsideration and withdrawal of the rejection respectfully is requested.

In response to the rejection of claim 13 under 35 U.S.C. §101, Applicant has canceled claim 13 without prejudice or disclaimer, thereby rendering this Rejection moot. Reconsideration and withdrawal of the rejection is respectfully requested.

#### Rejections Under 35 U.S.C. § 102 & 103

B Response to rejection of claims 1-8, and 10-13 under 35 U.S.C. §102(b) as being anticipated by Luciani et al.

Claims 1-8, and 10-13 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,028,149 of Luciani et al. ("Luciani"). Applicants first note that in the rejection under U.S.C. §103(a), the Examiner has acknowledged that Luciani does not expressly teach a nitrogen-containing electron donor and prepolymerization of the Ziegler catalyst. Since

claim 6 has been amended to incorporate the features of claim 7 (nitrogen-containing atom), Applicant respectfully submits that the reference does not teach all the elements of the current claims.

Reconsideration and withdrawal of the rejection respectfully is requested.

C. Response to rejection of claims 7 and 9 under 35 U.S.C. §103(a) as being unpatentable over Luciani et al. in view of Bailly et al.

Claims 7 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,028,149 of Luciani et al. ("Luciani") in view of U.S. Patent No. 5,075,396 of Bailly et al. ("Bailly"). First, with respect to Bailly et al., it corresponds to U.S. Patent No. 5,208,109, as per the PTO-892 form attached to the Office Action, not to U.S. Patent No. 5,075,396 of Kashiwa et al ("Kashiwa"), so that Applicant has assumed that the reference to Kashiwa was a typographical error. Therefore, Applicants will address Bailly, not Kashiwa in this Response. Applicant earnestly requests confirmation of this assumption in the next Office Action. In any event, Applicant submits that a *prima facie* case of Obviousness has not been made out by the Examiner.

With respect to a rejection under §103, in order to establish a *prima facie* case of Obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

First, the Examiner has acknowledged that Luciani does not expressly teach a nitrogen-containing electron donor and pre-polymerization of the Ziegler catalyst. However, in addition, the current claims recite bringing an inorganic metal oxide into contact with titanium tetrachloride. Luciani does not specifically teach the use of titanium tetrachloride as in the present claims. Rather, at most it teaches it's use as an optional component along with a silylated silica support with a solution of Mg-halide or Mg-alkyl-halide or a mixture of both and Ti-alkoxide or Ti-halogen-alkoxide or a mixture of both. (col. 1, lines 60-63) Luciani's examples illustrate contacting steps involving only  $\alpha$ -Mg-dichloride and Ti-tetrabutoxide.

In fact, Luciani teaches away from step A) of the current claims, where an inorganic metal oxide is brought into contact with titanium tetrachloride, in that it specifically criticizes the use of titanium chloride as in the present claims:

It has to be underlined that the use of Ti-tetra-chloride instead of Ti-alkoxide or Ti-halogen-alkoxide does not permit to achieve a good catalyst component (Comparative example D). (col. 3, lines 57-60)

Bailly does not cure the deficiencies of Luciani. Bailly relates to a process for polymerizing or copolymerizing alpha-olefins in the gas phase by means of a fluidized bed. One objective of Bailly is to obtain polymers or copolymers of alpha-olefins having a variety of properties and having very low contents of inorganic residues. (col. 2, lines 48-50) However, since both the present claims and Luciani employ inorganic oxides, the reference teaches away from both:

It is also known that one can introduce the catalyst into the fluidized-bed reactor in association with an inorganic granular support. This inorganic granular support generally consists of refractory oxides such as alumina, silica, aluminum silicate or magnesium oxide....Unfortunately, the polymers or copolymers obtained in this way have comparatively high contents of inorganic residues and this has an adverse effect on their properties. (col. 1, line 56 to col. 2, line 8)

Moreover, while the Examiner has relied upon Bailly for limitations related to the donor used in the current process claims, the passage cited by the Examiner simply mentions that the electron donor compound used in the reaction can include "at least one atom of oxygen, sulphur, nitrogen and/or phosphorus." In particular, an aliphatic ether oxide is mentioned. (col. 3, line 65 to col. 4, line 5). Therefore, Bailly teaches the use of several classes of donors, one of which is nitrogen-containing, in a catalyst component completely different than that of the present claims. There is thus no teaching or suggestion to use a nitrogen-containing donor as in the present process steps.

Therefore, for the above reasons, a *prima facie* case of Obviousness have not been made out by the Examiner. Reconsideration and withdrawal of the rejection respectfully is requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have questions or comments regarding this application or this Amendment, Applicant's attorney would welcome the opportunity to discuss the case with the Examiner.

The Commissioner is hereby authorized to charge U.S. PTO Deposit Account 08-2336 in the amount of any fee required for consideration of this Amendment.

Respectfully submitted,

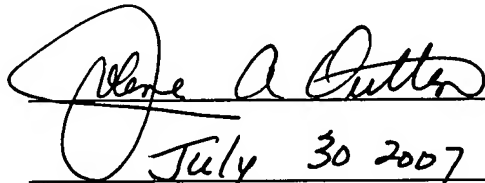


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I hereby certify that this correspondence is being deposited with sufficient postage thereon with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 30, 2007.



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